

FACSIMILE **BROWN MARTIN HALLER & McCLAIN**TO FAX NO.: 1-703-308-6459ATTENTION: Petition Attorney Derek Putonen
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Patents, Trademarks,
Copyrights, FranchisingFROM: J.W. McClain. Reg. No. 24,536
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(including this cover)1660 Union Street
San Diego, California 92101Date of transmission: February 27, 2002Telephone: (619) 238-0999
Facsimile: (619) 238-0062Attorney's Docket No.: 7320 PA01**- IMPORTANT CONFIDENTIALITY INFORMATION -**

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Re: Application Ser. No. 08/809,677, filed 27 September 1994, for "ARTIFICIAL LIVER APPARATUS AND METHOD", Inventors: Edward F. Myers et al.

Facsimile transmittal of:

- a) Supplement to Legal Opinion Accompanying Response to Decision on Renewed Petition under 37 C.F.R. § 1.47(b) and Request for Reconsideration of Said Decision [3 pages]
- b) This Facsimile Transmittal Cover [2 pages]

REMARKS

Applicants have on February 15, 2002, submitted to the USPTO by Express Mail a Response to Decision on Renewed Petition under 37 C.F.R. § 1.47(b) and Request for Reconsideration of Said Decision, accompanied by a Legal Opinion of attorney James W. McClain (and also accompanied by several other documents and references). It is not known by Applicants' attorney whether those submissions have yet reached Mr. Putonen.

- A If the submitted Response, Opinion and other documents have now reached Mr. Putonen, it should be promptly provided to Mr. Putonen with those submissions.

Fax to Petition Examiner Putonen
Transmittal Cover Page 2

B. If the submitted Response, Opinion and other documents have not yet reached Mr. Putonen the Supplement enclosed herewith should be entered into the file and retained therein until the submitted packet does reach Mr. Putonen so that it can be considered in conjunction with the documents in that packet.

Telephoned inquiries with respect to this facsimile transmittal should be directed to the undersigned Attorney for Applicants at the above-identified telephone number of **(619) 238-0999**.

The Patent and Trademark Office is authorized to charge all required fees related to this submission, if any, to Deposit Account No. 02-4070.



James W. McClain, Reg. No. 24,536
Attorney for Applicants

Operator: MUL

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of)	Assignee: Xenogenics Corporation
)	(by mesne assignments)
EDWARD F. MYERS ET AL.)	
)	FOR: ARTIFICIAL LIVER APPARATUS
U.S. Serial No.: 08/809,677)	AND METHOD
)	
Int'l. Appln. No.: PCT/US94/10935)	Group Art Unit: PCT Office
)	
Int'l. Filing Date: 27 September 1994)	

**SUPPLEMENT TO RESPONSE TO DECISION ON RENEWED PETITION
UNDER 37 C.F.R. § 1.47(b) AND REQUEST FOR
RECONSIDERATION OF SAID DECISION**

Hon. Commissioner for Patents
Washington, D.C. 20231

Attention: Derek Putonen
Petition Attorney

Dear Sir:

This is a Supplement to the Legal Opinion of attorney James W. McClain, submitted as part of the Response and Request which was filed by Express mail of February 15, 2002, in response to the Petition Attorney's Decision dated December 20, 2001 in this application.

Certification of Facsimile Transmission

I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office on the date shown below.

Melissa Leffler

Type or print name of person signing certificate

Melissa Leffler
(Signature)

Feb. 27, 2002
(Date)

Ser. No. 08/809,677

Applicants' attorney has discovered that one aspect of the Decision was inadvertently not responded to in that Legal Opinion. This Supplement is to address that aspect. The following supplemental remarks herein (identified as additional ¶¶ 26-28) should be considered to follow ¶¶ 18-25 of the Legal Opinion and to be read in conjunction therewith.

26. On page 3, Item C of the Decision, the Petition Attorney addresses Applicants' Exhibits G and K regarding the assignment of patent rights by Dr. Demetriou to Exten (Exhibit K) and the subsequent reassignment from Exten to Xenogenics (Exhibit G). It is the Attorney's contention that Exhibit K does not apply to the current continuation-in-part application since the words "continuation-in-part" do not appear in Exhibit G, notwithstanding that they are in Exhibit K.

27. In my opinion the correct legal analysis of this issue is identical to the analysis made above in ¶¶ 18-25 with respect to Exhibit D, Dr. Myers' assignment to CSMC, and that analysis is repeated here by reference. The same facts and all legal arguments apply, including but not limited to that if there was an omission of "continuation-in-part" it was inadvertent and the parties [Exten and Xenogenics] treated the assignment as being complete in all respects as to assignment of not only the 07/943,777 application *but also all of its progeny*, regardless of their specific designations. The Exhibit G assignment must be construed according to California contract law in the same manner as the Exhibit D assignment, and for the same reasons as with Exhibit D the internal PTO opinion in *Gray* cannot negate that construction.

28. Therefore, in my opinion the Exhibit G assignment acted fully and completely to transfer all right, title and interest in and to the present application Ser. No. 08/809,677 and the invention claimed therein from Exten to Xenogenics.

CONCLUSION

Therefore, I find that the Petition Attorney's arguments are not persuasive.

Ser. No. 08/809,677

§ 1.47(b) have now been met and that Petitioner is therefore entitled to proceed with prosecution and examination of this application and with allowance of all claims therein, and to receive Letters Patent thereon, and a ruling by the Petition Attorney to that effect is earnestly solicited.

As indicated previously, should the Petition Attorney believe that an affirmative ruling in this matter might be expedited by further discussion of any issues, a telephone call to the undersigned attorney, collect, at the telephone number listed below, is cordially invited.

Respectfully submitted,

Date: February 27, 2002

By: 

James W. McClain, Reg. No. 24,536
Attorney for Petitioner

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